

**ASSEMBLY BILL**

**No. 713**

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**Introduced by Assembly Member Wagner**

February 21, 2013

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An act to amend Section 25004 of the Corporations Code, relating to securities.

LEGISLATIVE COUNSEL'S DIGEST

AB 713, as introduced, Wagner. Broker-dealers.

Existing law, the Corporate Securities Law of 1968, defines a broker-dealer as, among other things, any person engaged in the business of effecting securities transactions in California for the account of others or his or her own account, and it specifies those persons or entities excluded from the definition.

Pursuant to the Governor's Reorganization Plan No. 2 of 2012 (GRP 2), the regulation of corporations by the Commissioner of Corporations effective July 1, 2013, is transferred to the Commissioner of Business Oversight.

This bill would add to the persons and entities excluded from the definition of a broker-dealer an individual who is a finder, as defined, that satisfied specified requirements, including, among other things, filing an initial statement of information with the Department of Business Oversight and paying a filing fee. The bill also would make technical changes to conform with the GRP 2.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. Section 25004 of the Corporations Code is amended to read:

25004. (a) “Broker-dealer” means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. “Broker-dealer” also includes a person engaged in the regular business of issuing or guaranteeing options with regard to securities not of his own issue. “Broker-dealer” does not include any of the following:

- (1) Any other issuer.
- (2) An agent, when an employee of a broker-dealer or issuer.
- (3) A bank, trust company, or savings and loan association.
- (4) Any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.
- (5) A person who has no place of business in this state if he effects transactions in this state exclusively with (A) the issuers of the securities involved in the transactions or (B) other broker-dealers.
- (6) A broker licensed by the Real Estate Commissioner of this state when engaged in transactions in securities exempted by subdivision (f) or (p) of Section 25100 or in securities the issuance of which is subject to authorization by the Real Estate Commissioner of this state or in transactions exempted by subdivision (e) of Section 25102.
- (7) An exchange certified by the Commissioner of ~~Corporations~~ *Business Oversight* pursuant to this section when it is issuing or guaranteeing options. The commissioner may by order certify an exchange under this section upon ~~such~~ *any* conditions as he *or she* by rule or order deems appropriate, and upon notice and opportunity to be heard he may suspend or revoke ~~such that~~ certification, if he *or she* finds ~~such the~~ certification, suspension, or revocation to be in the public interest and necessary and appropriate for the protection of investors.
- (8) (A) *An individual who acts only as a finder and who satisfies all of the conditions set forth in subparagraphs (B) to (H), inclusive. For purposes of this section, a “finder” is a person who introduces or refers one or more accredited investors to an issuer or an issuer to one or more accredited investors, solely for the*

1 *purpose of a potential investment in the securities of the issuer;*  
2 *and who does not (i) participate in negotiating any of the terms*  
3 *of the investment; (ii) advise any party to the securities transaction*  
4 *regarding the merits of, or the advantages or disadvantages of*  
5 *entering into the investment; or (iii) sell or intend to sell any*  
6 *securities of the issuer, which securities are owned, directly or*  
7 *indirectly, by the finder as a part of the investment. A person who*  
8 *fails to comply with the requirements of this paragraph shall not*  
9 *be entitled to rely on the exemption afforded hereunder.*

10 *(B) The finder shall have filed an initial statement of information*  
11 *with the Department of Business Oversight, in a form as the*  
12 *commissioner may prescribe by regulation, and has paid an initial*  
13 *filing fee.*

14 *(C) The finder shall have timely filed any annual reports of*  
15 *activity with the Department of Business Oversight, in a form as*  
16 *the commissioner may prescribe by regulation, and has paid the*  
17 *requisite filing fee.*

18 *(D) For each transaction or series of transactions, the finder*  
19 *shall have filed a notice with the Department of Business Oversight,*  
20 *to be made available to the public in a form as the commissioner*  
21 *may prescribe by regulation, containing affirmative representations*  
22 *by the finder that the finder (i) is acting only to introduce the*  
23 *parties and will not effect any transaction in, advise or consult on,*  
24 *or induce or attempt to induce the purchase or sale of, any security*  
25 *in this state; (ii) has not done any of the acts, satisfied any of the*  
26 *circumstances, or is subject to any order specified in Section*  
27 *25212; (iii) has not engaged in any advertising or general*  
28 *solicitation with respect to the offering, sale, or purchase of any*  
29 *securities; (iv) will not receive, directly or indirectly, possession*  
30 *or custody of any funds in connection with acting as a finder; (v)*  
31 *has not acted in violation of any provision of this section; and (vi)*  
32 *has fully disclosed and obtained the informed written consent of*  
33 *the issuer and the potential investor regarding the material terms*  
34 *of the compensation arrangement between the issuer and the finder*  
35 *relating to the finder's introduction of the investor. A separate*  
36 *notice shall be filed for each new offering of securities, no later*  
37 *than 30 calendar days following the first sale of securities in the*  
38 *offering, unless the end of that period falls on a Saturday, Sunday*  
39 *or holiday, in which case the due date shall be the next business*

1 day. For each notice filing, the finder shall pay a filing fee, as set  
2 from time to time by the Department of Business Oversight.

3 (E) Concurrently with each introduction, the finder shall have  
4 obtained the informed, written consent of each person or entity  
5 introduced by the finder to an issuer, in an agreement signed by  
6 the finder, the issuer, and the investor, disclosing the following:  
7 (i) the type and amount of compensation that will be paid to the  
8 finder in connection with the investment and the conditions for  
9 payment of that compensation; (ii) that the finder shall neither  
10 recommend nor advise the investor with respect to the subject  
11 securities transaction; (iii) whether the finder is also an owner of  
12 the securities offered by the issuer, and (iv) any other actual and  
13 potential conflict of interest in connection with the finder's  
14 activities. Each investor shall represent in the written consent that  
15 the investor is an accredited investor, as that term is defined in  
16 Regulation D under the Securities Exchange Act of 1933, as  
17 amended, and that the investor knowingly consents to the payment  
18 of the compensation described therein.

19 (F) The finder shall maintain and preserve, for a period of five  
20 years from the date of filing of the notice prescribed in  
21 subparagraph (B), a copy of the notice, the written consent  
22 required in subparagraph (C), and all other records relating to  
23 any investments in connection with which the finder receives  
24 compensation, as the commissioner may by rule require. The finder,  
25 upon written request of the commissioner, shall furnish to the  
26 commissioner any records required to be maintained and preserved  
27 under this subparagraph.

28 (G) The finder shall not engage in any of the following: (i)  
29 directly or indirectly taking possession or custody of investor funds;  
30 (ii) knowingly participating in any unregistered offering not  
31 otherwise exempt from registration or qualification; (iii) failing  
32 to disclose the existence of a financial or pecuniary benefit to the  
33 finder in connection with or relating to the finders' introduction;  
34 (iv) conducting due diligence on behalf of issuer or investor; (v)  
35 soliciting, marketing, advertising, or holding himself, herself, or  
36 itself out to the public in general as being in the business of making  
37 introductions between accredited investors or issuers or seeking  
38 business from accredited investors or issuers; (vi) or making any  
39 disclosures to investors other than disclosures expressly permitted  
40 under this subparagraph. Permitted disclosures are limited to the

1 *name, address, and telephone number of the issuer; the name,*  
2 *type, and price (if known) of any securities to be issued; the issuer's*  
3 *industry, location, and years in business; the type, number, and*  
4 *aggregate amount of securities being offered; and contact*  
5 *information regarding the investor.*

6 (b) For purposes of this section, an agent is an employee of a  
7 broker-dealer under paragraph (2) of subdivision (a) when the  
8 agent is employed by or associated with the broker-dealer under  
9 all of the following conditions:

10 (1) The agent is subject to the supervision and control of the  
11 broker-dealer.

12 (2) The agent performs under the name, authority, and marketing  
13 policies of the broker-dealer.

14 (3) The agent discloses to investors the identity of the  
15 broker-dealer.

16 (4) The agent is reported pursuant to subdivision (c) of Section  
17 25210 and the rules adopted thereunder.